UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

STARBUCKS CORPORATION
Employer

and

Cases 03-RC-282115
03-RC-282127
03-RC-282139

WORKERS UNITED
Petitioner

CORRECTED ORDER[1]

The Employer's Request for Review of the Acting Regional Director's Decision and Direction of Elections is denied as it raises no substantial issues warranting review.[2]

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[1] The name of the Petitioner was corrected from "Workers United Upstate" to "Workers United."

[2] In denying review, we emphasize that the central issue here is whether the Employer has met its "heavy burden" to overcome the presumption that the single-store units sought by the Petitioner are appropriate. See *California Pacific Medical Center*, 357 NLRB 197, 200 (2011). To rebut this presumption, the Employer "must demonstrate integration so substantial as to negate the separate identity" of the single store units. Id. The Acting Regional Director set out and applied this standard, though we do not rely on her isolated statement that "[a]n employer satisfies its burden of overcoming the single facility presumption when, in essence, it demonstrates that a single-facility unit is nevertheless arbitrary under the Board's multi-factor analysis." At various points in its request for review, the Employer suggests that all Buffalo-area employees must be in the same bargaining unit because they share some community of interest with those employees in the petitioned-for units. But the relevant legal question before us is whether the Employer has met its heavy burden to overcome the presumption that the three petitioned-for single store units are appropriate; the mere fact that the petitioned-for employees may share some community of interest with excluded employees does not serve to rebut the presumption.

In agreeing with the Acting Regional Director that the Employer did not meet its heavy burden here, we note that the Petitioner adduced specific evidence demonstrating that "the employees perform their day-to-day work under the immediate supervision of a local store manager who is involved in rating employee performance, or in performing a significant portion of the hiring and firing of the employees, and is personally involved with the daily matters which make up their grievances and routine problems." See *Haag Drug*, 169 NLRB 877, 878 (1968). Although the Employer generally contends that its automated tools and company-wide policies limit store managers' discretion over such daily matters, its conclusory and generalized testimony fails to rebut the Petitioner's evidence that store managers play a significant role in adjusting schedules, approving time off and overtime, evaluating employees, conducting interviews and hiring employees, and imposing discipline.

MARVIN E. KAPLAN, MEMBER

GWYNNE A. WILCOX, MEMBER

DAVID M. PROUTY, MEMBER

Dated, Washington, D.C., December 7, 2021.

With respect to interchange, we disavow the Acting Regional Director's suggestion that *Lipman's*, 227 NLRB 1436, 1438 (1977), stands for the proposition that permanent transfers are not relevant to the Board's analysis of employee interchange in this context. We agree, however, with her conclusion that interchange supports the petitioned-for single-facility units. In this regard, we observe that although the Employer has demonstrated that a significant percentage of employees work "at least one shift" at another store "per year," this is not evidence of *regular* interchange sufficient to rebut the single-facility presumption, especially because the data provided by the Employer indicate that the petitioned-for stores "borrow" only a very small percentage of their labor from other stores. See *Cargill, Inc.*, 336 NLRB 1114, 1114 (2001).

Finally, we agree with the Acting Regional Director, for the reasons she stated, that the remaining factors under the Board's single-facility test—similarity of employee skills, functions, and working conditions; geographic proximity; and bargaining history—are not sufficient to rebut the single-facility presumption, especially given the lack of centralized control and interchange.

Member Kaplan notes that, contrary to the Employer's suggestion in its request for review, the Acting Regional Director did not determine the need for a mail ballot election under *Aspirus Keweenaw*, 370 NLRB No. 45 (2020), the standard applicable to elections held under Covid-19 pandemic conditions. Instead, the Acting Regional Director found that the Employer's employees at the three stores in question work shifts on different days and at different times, with most of them working part-time schedules, and therefore, they are "scattered" to an extent justifying a mail ballot election under an exception specifically set forth in *San Diego Gas and Electric*, 325 NLRB 1143, 1145 (1998). The Employer admits that an "overwhelming" number of employees at the 3 stores are part-time, and it refers specifically only to the common four-day shifts of two employees to support its general argument that part-time schedules do not preclude the possibility of a manual ballot election at a common non-store site or sites within the geographic region of Buffalo. The Employer does not provide any reason why the work schedules of these two employees should be exemplars for any or all employees of the three single-store units, nor does it identify any specific locations and times where the suggested manual ballot election(s) might practically be held. Under these circumstances, Member Kaplan agrees that the Employer's request for review fails to raise an issue warranting review as to whether the Acting Regional Director abused her discretion by directing a mail ballot election in light of the employees' disparate part-time and shift schedules. However, he does not rely on any of the other factors considered by the Acting Regional Direction in directing a mail ballot election.